

On July 14, 1993 appellant, then a 55-year-old customs agent, sustained injuries in a motor vehicle accident while in the performance of duty. The Office accepted neck and back strain and unstable degenerative disc disease at L4-5, for which she underwent an L4-5 decompression and fusion.

On August 20, 2001 appellant completed a Form CA-7 claiming that she was going to be out of work on leave without pay from September 10 to October 9, 2001. On September 4, 2001 appellant filed a Form CA-7 claim for compensation alleging that she stopped work, took sick leave and was disabled during the period June 18 through September 7, 2001. Reports from appellant's pain clinic described her pain status, and further medical evidence addressed her physical condition status.

In support of her CA-7 claims for compensation, appellant submitted medical evidence. In a July 5, 2001 unsigned radiology report, Dr. Michael T. King, a Board-certified radiologist, listed a clinical impression regarding mild findings including a suggested small posterior annular tear at L4-5, mild internal desiccation associated with a mild annular bulging at L4-5, and degenerative disc disease with associated mild L4-5 end plate spondylosis. In a Form CA-17 duty status report dated July 20, 2001, Dr. Anthony Russell, a Board-certified neurosurgeon, indicated that appellant was temporarily totally disabled from June 15, 2001 for an unknown period, while awaiting further evaluation. The form noted as appellant's diagnosis that she had problems with the "origin unknown exactly. Low back pain as a result of on-the-job injury."

In a July 23, 2001 unsigned radiology report, Dr. Gary Allen, a Board-certified radiologist, found mild retrolisthesis of L4 on L5 with a mass effect on the thecal sac, which was likely the result of a disc bulge, and that mild stenosis at that level was suspected. Minimal mass effect on the left L5 nerve root sleeve at L4-5 was noted. A computerized axial tomography (CAT) scan was noted as demonstrating moderate L4-5 spinal stenosis secondary to the triad of a moderate diffused epidural mass/disc bulge, ligamentum flavum and facet hypertrophy, with mild retrolisthesis of L4 on L5.

On August 6, 2001 Dr. Thomas Hart, a Board-certified pain management specialist, completed a Form CA-20 attending physician's report noting appellant's disc-related problems. He checked "yes" to the question of whether the condition found was causally related to the 1993 automobile accident. Dr. Hart noted: "[Appellant] did not have the problems prior to the vehicle accident." He also checked "no" to the question of whether appellant had concurrent or preexisting injury.

In an August 6, 2001 narrative report, Dr. Hart reviewed appellant's condition and symptomatology, and he recommended treatment with medications and some definitive therapeutic intervention.

By report dated September 18, 2001, Dr. Hart reviewed appellant's history, her present complaints and provided the results found on physical examination. He opined that she had a C4-5 disc protrusion with multilevel multifactorial cervical disc and joint disease, chronic pain syndrome and depression. Dr. Hart noted that appellant had been unable to work due to pain and the numerous clinical studies that she had to undergo. On November 19, 2001 he noted appellant's diagnostic work-up and history of clinic interventions. Dr. Hart noted that a neurosurgical consultation determined that appellant was not a candidate for surgery for mild stenosis and that, even though she might not show any gross disc herniation, previous imaging studies demonstrated high intensity zones at L4-5 and L5-S1 which indicated that she had an inflamed disc component. Further neurological consultation was recommended. Dr. Hart referred appellant to Dr. Reza Shahim, a Board-certified neurosurgeon, for evaluation.

On January 8, 2002 Dr. Hart indicated that Dr. Shahim recommended a spinal decompression at L4-5 with a posterior fusion due to instability. By report dated February 8, 2002, Dr. Hart discussed appellant's treatment with surgical intervention.

In a February 18, 2002 report, Dr. Shahim indicated that appellant had a "work-related accident in 1993, resulting in lumbar radiculopathy." He reported appellant's symptoms at that time and recommended surgical management.

In a March 8, 2002 report, Dr. Hart discussed appellant's complaints, noted clinical examination results, and discussed treatment in accordance with Dr. Shahim's recommendations. Further medical reports addressing appellant's treatment were submitted.

By decision dated May 24, 2002, the Office denied appellant's claim, finding that the evidence of record failed to establish that she was disabled causally related to her 1993 neck and back strain or her degenerative disc disease at L4-5 for the period September 10 through October 9, 2001. The Office noted that appellant's case remained open for medical treatment and her lower back surgery was approved.

Appellant underwent a posterior lumbar fusion on May 31, 2002, and was determined to be disabled for at least six months thereafter.

On June 17, 2002 appellant requested an oral hearing before an Office hearing representative which was held on January 30, 2003. She claimed that her condition had been ongoing from the original July 14, 1993 injuries, and that, although she returned to full-time regular-duty work, she continued to experience intermittent periods of disability. Appellant used annual leave until September 10, 2001 when her leave ran out, and claimed compensation thereafter. She claimed that she stopped work on June 17, 2001 and continued off work until she had surgery on May 31, 2002, for a decompression and lumbar fusion at L4-5.

Appellant resubmitted the July 20, 2001 Form CA-17 at the hearing, which was completed by Dr. Russell. Also submitted were other medical treatment notes from Drs. Hart and Shahim. In a July 22, 2002 attending physician's report, Dr. Shahim checked "yes" to the question of whether appellant's condition, lumbar spinal stenosis, was related to her employment. A January 28, 2003 report was submitted from Dr. Shahim which addressed appellant's current conditions of cervical and lumbar spondylosis and treatment. Dr. Shahim concluded that appellant was disabled due to these conditions.

By letter dated March 6, 2003, appellant's representative noted that appellant was claiming wage-loss compensation for her back pain for the period September 10, 2001 through May 30, 2002, the day before her surgery.

By decision dated April 18, 2003, the hearing representative found that appellant failed to establish that she was totally disabled for the period September 10, 2001 through May 30, 2002.<sup>1</sup> The hearing representative found that appellant had failed to submit sufficient medical evidence

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<sup>1</sup> Surgery was performed on May 31, 2002.

to support causal relation. He also noted that no psychiatric condition had been accepted by the Office as being employment related.

### **LEGAL PRECEDENT**

In general the term “disability” under the Federal Employees’ Compensation Act means “incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.”<sup>2</sup> This meaning, for brevity, is expressed as “disability for work.”<sup>3</sup>

An employee, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of an employment injury. Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues which must be established by probative and substantial evidence.<sup>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed total disability and her accepted employment-related conditions. The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.<sup>5</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

It has been held that unsigned medical notes and diagnostic reports lack proper identification and therefore cannot be considered as probative evidence.<sup>7</sup> An answer to a form question marked as “yes” without further medical explanation or rationale is conclusory and of diminished probative value.<sup>8</sup> Conclusory reports, which are unaccompanied by medical explanation, have little probative value.<sup>9</sup>

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<sup>2</sup> *Roberta L. Kaaumoana*, 54 ECAB \_\_\_\_ (Docket No. 02-891, issued October 9, 2002); *see also* 20 C.F.R. § 10.5(f).

<sup>3</sup> *Roberta L. Kaaumoana*, *supra* note 2.

<sup>4</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>6</sup> *Fereidoon Kharabi*, *supra* note 4.

<sup>7</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994); *William C. Thomas*, 45 ECAB 591 (1994).

<sup>9</sup> *Id.*

## ANALYSIS

Appellant alleged that she experienced intermittent disability for the period September 10, 2001 through May 30, 2002. Appellant is required to prove through reliable, probative and substantial medical evidence that she was disabled for the periods claimed due to her accepted employment injuries. This she did not do.

The Office accepted appellant's July 14, 1993 employment injury claim for neck and back strain and unstable degenerative disc disease at L4-5. Surgical L4-5 decompression surgery and fusion was authorized. Eight years later, appellant filed a Form CA-7 claiming that she was disabled during the period June 18 through September 7, 2001, causally related to her July 14, 1993 accepted employment injuries. She filed an additional Form CA-7 claiming that she was disabled and on leave without pay from September 10 to October 9, 2001. At a 2003 oral hearing, appellant claimed that her condition had been ongoing since 1993, and testified that her disability continued until May 31, 2002, when she underwent spinal decompression surgery with fusion. The Board finds that the medical evidence submitted in support of her claimed periods of total disability is insufficient to establish her claims.

In a July 20, 2001 report, Dr. Russell stated that appellant was disabled from June 15, 2001 for an unknown period. He noted, however, that the origin of appellant's problem was "unknown exactly. Low back pain as a result of on-the-job injury." This report is speculative and the opinion of Dr. Russell, is of reduced probative value and insufficient to establish appellant's disability during the periods claimed.<sup>10</sup> Dr. Russell did not provide an accurate history of injury, provide any description or explanation of appellant's disability on June 15, 2002 was in any way causally related to her July 14, 1993 accepted employment injuries. His report lacks medical rationale for his stated conclusion.

A July 5, 2001 unsigned radiology report dictated by Dr. King covering a period for which appellant had claimed disability, revealed mild findings and does not discuss her disability for the claimed periods. As this report was unsigned, it also lacks proper identification and is not probative evidence on the relevant issue in this case.<sup>11</sup> The July 23, 2001 radiology report of Dr. Allen has the same problems as Dr. King's report. The diagnostic study offered an opinion on the issue relevant to this appeal.

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<sup>10</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment, and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate factual and medical background. See *Samuel Senkow*, 50 ECAB 370 (1999); *Judith J. Montage*, 48 ECAB 292 (1997).

<sup>11</sup> See *Merton J. Sills*, *supra* note 7.

Dr. Hart checked “yes” on an August 6, 2001 Form CA-20 attending physician’s report indicating causal relation with an explanation that “[Appellant] did not have the problems prior to the vehicle accident.”<sup>12</sup> This comment is unsupported by contemporaneous medical evidence, is conclusory and is of insufficient probative value to establish causal relationship.<sup>13</sup> A narrative report from Dr. Hart dated August 6, 2001 also did not address causal relationship and hence is of limited probative value.

By report dated September 18, 2001, Dr. Hart opined that appellant had a C4-5 disc protrusion with multilevel multifactorial cervical disc and joint disease, chronic pain syndrome and depression. He noted that she had been unable to work due to pain and the numerous diagnostic studies. He did not discuss the time or circumstances of the onset of appellant’s disability or the relationship between the onset of disability and her July 14, 1993 accepted employment injuries. On November 19, 2001 Dr. Hart provided another report in which he noted appellant’s clinical work-up and history of interventions. He additionally provided a January 8, 2002 report that indicated that spinal decompression surgery at L4-5 was recommended with a posterior fusion due to instability. By report dated February 8, 2002, Dr. Hart again discussed appellant’s treatment with surgical intervention but neither discussed causal relationship with the accepted employment injuries nor indicated when, how or why her onset of disability began. None of these reports address the periods of intermittent disability claimed.

In a February 18, 2002 report, Dr. Shahim stated that appellant’s work-related accident in 1993 resulted in lumbar radiculopathy. He provided insufficient medical rationale as to how or why the 1993 back and neck strain and degenerative disc disease injuries caused radiculopathy diagnosed in 2002. On July 22, 2002 Dr. Shahim also checked “yes” to a form question about causal relationship but omitted any medical explanation of how or why it occurred. Therefore his reports have diminished probative value. Dr. Shahim’s July 22, 2002 attending physician’s report also contained a checkmark “yes” that appellant’s condition was employment related. However, without medical rationale, the Board finds that this opinion of diminished probative value as it is conclusory. Dr. Shahim’s January 28, 2003 report did not address whether appellant was disabled for the claimed periods as a result of the accepted employment injuries. Although he concluded that appellant was disabled due to cervical and lumbar spondylosis, these conditions have not been accepted by the Office. Dr. Shahim has provided insufficient rationale to support disability for the intermittent periods claimed.

As appellant has not submitted sufficient probative medical evidence addressing whether she had disability causally related to her 1993 injuries for the intermittent periods claimed. She has failed to meet her burden of proof to establish her claim.

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<sup>12</sup> A comment that “Its related because appellant was asymptomatic prior to the incident,” which is not supported by contemporaneous medical evidence, is insufficient to establish causal relationship. *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Kimper Lee*, 45 ECAB 565 (1994); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>13</sup> See *Ruth S. Johnson and William C. Thomas*, *supra* note 8.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained disability for the period September 10, 2001 through May 30, 2002.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 18, 2003 is hereby affirmed.

Issued: July 26, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board